

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE ROCKEFELLER CENTER)
PROPERTIES, INC. SECURITIES) Civil Action No. 96-543-KAJ
LITIGATION)
)

MEMORANDUM ORDER

This case having been finally adjudicated, see *Charal Inv. Co. v. Rockefeller*, 131 F. Supp. 2d 593 (D. Del. 2001), *aff'd sub nom. In re Rockefeller Ctr. Props. Secs. Litig.*, 311 F.3d 198 (3d Cir. 2002), I am required, pursuant to the Private Securities Litigation Reform Act (the “PSLRA”), specifically 15 U.S.C. § 78u-4(c), to “include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.” 15 U.S.C. § 78u-4 (2004). The PSLRA does not alter the substantive standards of Rule 11. *Simon De Bartolo Group L.P. v. Richard E. Jacobs Group, Inc.*, 186 F.3d 157, 167 (2d Cir. 1999). Indeed, while Congress sought to reduce the filing of frivolous securities cases, it sought to do so “without hindering the ability of victims of fraud to pursue legitimate claims.” *Id.* at 166-67 (quoting H.R. Conf. Rep. No. 104-369 (1995), reprinted in 1995 U.S.C.C.A.N. 730).

As the Third Circuit has emphasized, “Rule 11 targets abuse, making sanctions appropriate only if ‘the filing of the complaint constituted abusive litigation or misuse of the court’s process.’ Thus, the mere failure of a complaint to withstand a motion for summary judgment or a motion to dismiss should not be thought to establish a rule

violation.” *Simmerman v. Corino*, 27 F.2d 58, 62 (3d Cir. 1994) (quoting *Teamsters Local Union No. 430 v. Cement Express, Inc.*, 841 F.2d 66, 68 (3d Cir. 1988)); see also *De al Fuente v. DCI Telecommunications, Inc.*, 2003 U.S. Dist. LEXIS 3236, slip op. at *27 (S.D.N.Y. Mar. 4, 2003) (“Claims are not frivolous simply because they were dismissed.”).

In response to my Order of April 21, 2003, plaintiffs’ counsel submitted proposed findings of fact and conclusions of law regarding their compliance with Rule 11. (See Docket Item [“D.I.”] 183.) The defendants have noted that they “do not object to the entry of findings that plaintiffs and their counsel complied with Rule 11.” (D.I. 184 at 2.) While I do not need to adopt the entirety of the plaintiffs’ filing, I agree that their proposed findings and conclusions support the entry of a finding that plaintiffs and their counsel complied with Rule 11 in this matter. As to other parties and counsel in the case, no evidence has been adduced to indicate anything but compliance with Rule 11 by such parties and their counsel, and the success of the defendants and their counsel in having the case dismissed strongly supports the conclusion that they too have complied with Rule 11 in this case.

Accordingly, it is hereby ORDERED that the following finding is made of record in this matter: All parties and their counsel have complied with Rule 11(b) of the Federal

Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion filed in the case.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

June 7, 2004
Wilmington, Delaware